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ABSTRACT

In August 1978, the Federal Communications Commission (FCC) began studying the question of how to increase the diversity and coverage of television broadcast services either by modifying the television translator rules or by creating a new low power television service (LPTV). In Septemer 1980, the FCC finally adopted a "Notice of Proposed Rulemaking" for this new LPTV service. In the months that followed, more than 6,000 applicants submitted requests for low power stations, and in April 1981, the FCC imposed a partial freeze on applications, since they were coming in faster than they could be processed. Processing began again in March 1982, when the final version of the LPTV rules was adopted. However, these rules pose potential problems for future LPTV services. The FCC's initial stated intention that LPTV would provide diverse, local programing in areas not currently served by television is threatened by the lack of any structural or behavioral regulation in the rules. The rules, in fact, favor the future domination of the LPTV services by already established media corporations. (Author/FL)

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LOW POWER TELEVISION:

THE IMPACT OF THE FINAL REGULATIONS

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ABSTRACT

Since August of 1978, the FCC has been studying the question of how to increase the diversity and coverage of television broadcast services by modifying the television translator rules or by creating a new low power television service (LPTV). On September 9, 1980, the Commission unanimously adopted a Notice of Proposed Rulemaking for this new LPTV service. Since the proposed rules were issued, there have been over 6,000 applications submitted for LPTV stations; however, in April, 1981, the FCC imposed a partial freeze on the processing of applications because the applications were coming in faster than the FCC could process them. The FCC adopted the final LPTV rules on March 4, 1982, and began processing the applications.

The final rules pose more potential problems for future LPTV services. The Commission's initial stated intention that LPTV would provide diverse, local programming in those areas that were presented unserved is threatened by the lack of any structural or behavioral regulation in the final rules. The final rules, in fact, favor the future domination of the LPTV services by established media corporations.

Since August of 1978, the FCC has been studying the question of how to increase the diversity and coverage of television broadcast services by modifying the television translator rules or by creating a new low power television service (LPTV).[1] On September 9, 1980, the Commission unanimously adopted a Notice of Proposed Rulemaking[2] for this new LPTV service. Since the proposed rules were issued, there have been over 6,000 applications submitted for LPTV stations; however, in April, 1981, the FCC imposed a partial freeze on the processing of applications because the applications were coming in faster than the FCC could process them.

The FCC adopted the final LPTV rules on March 4, 1982, and began processing the applications. Based on the final rules, the freeze will remain in effect until the FCC has disposed of the application backlog. According to FCC sources, the FCC is hoping to process 35-50 applications per month with the aid of a mini-computer and additional staff; but the backlog is not expected to be eliminated until the third quarter of 1985. In other words, no new applications will be accepted for LPTV until 1985, unless the applicants fall into one of two exempt categories. These categories include applications for areas presently unserved by a television station and those areas served by only one station.

The licensing process is slow, and it will be even slower if two applicants file for the same viewing area. Then the applications will have to go through a comparative "paper" hearing to decide who will get the LPTV service. The growth of LPTV services will be hampered by this lengthy process when applications are mutually exclusive. The Omnibus Budget Reconciliation Act of 1981, which added Section 309(i) to the Communications Act of 1934, permitted the FCC to utilize random selection among competing telecommunications facilities applicants;[3] however, the FCC initial reaction to this lottery system was to

reject it as unworkable. Finally, in September 1982 a new lottery bill was signed and the way cleared for implementation of a new lottery system for LPTV.[4]

The final rules pose more potential problems for future LPTV services. The Commission's initial stated intention that LPTV would provide diverse, local programming in those areas that were presented unserved is threatened by the lack of any structural or behavioral regulation in the final rules. The unrestricted, multiple-ownership rules allow anyone or any corporation to own as many LPTV stations as he desires. A one-year trafficking rule allows any LPTV owner to sell the station after operating it for only a year. There are no restrictions on cross-media ownership, and non-commercial preferences do not exist. These rules follow this Commission's present "unregulatory" philosophy, and consequently do not protect the local owner-operator of a LPTV station. The final rules, in fact, favor the future domination of the LPTV services by established media corporations.

The lack of behavioral regulations in the final rules also threaten LPTV as a local service. The programming rules allow for unlimited commercial use of a LPTV service. A station could potentially broadcast 24 hours of commercials. There are also no requirements on how much local programming must be broadcast. A LPTV service originally intended to provide local programming could conceivably broadcast no local programs.

In reviewing the history of LPTV, the regulations, and the impact of LPTV services, it becomes clear that the FCC no longer intends to fulfill its initial goal of promoting diverse, local television service through LPTV. In issuing its final rules on ownership, trafficking, programming and comparative hearings,

the FCC has spoken in favor of a "marketplace" that will most likely be dominated by major corporations and media conglomerates.

History of LPTV

From the inception of television broadcasting, considerable difficulty was encountered in bringing to smaller communities and more sparsely settled areas of the country as much service and choice as was available to that portion of the public living in larger cities and densely populated areas,[5] primarily because of the high costs of providing television service. Therefore, television translators were envisioned as useful facilities to provide extended television service to those areas that had difficulty receiving broadcast television stations. This service was especially needed for many communities where full-power television stations and cable television were not economically feasible.

Originally, the basic function of the television translator was to pick up the signal from a regular television station, boost the power of that signal and retransmit that same signal over other channels. In this supplemental role as passive rebroadcast devices, translators were allowed to operate only on UHF channels. They had to use very low power and could rebroadcast only the programming of another full-power station. They were forbidden to obtain revenue through subscription fees or presentation of advertising. However, recent technological advances and regulatory changes have altered the previous status of these translators and LPTV services.

In the early 1950's, translator and booster systems were a technologically new development, and the Commission's rules contained no provision for their licensing or their regulation. Thus these systems developed without the FCC's authority; by 1956, there were approximately 800-1,000 unlicensed translators in operation.[6] As these systems grew in number, the Commission became concerned

about potential interference with existing broadcast services. In 1956, the FCC amended its rules to authorize translators in the UHF band and limit their power. In authorizing UHF translator facilities, the Commission confined their operation to the upper 14 UHF channels (70-83) and limited their power to ten watts. By confining the translators to the less congested upper 14 channels, the FCC was able to relax operating and licensing requirements, thereby, making translators economically feasible.[7] At this time, the Commission also considered authorizing translators in the VHF band; however, it decided that the use of VHF channels would be highly inefficient because of the extensive engineering measurements required to determine whether or not a proposed translator would cause interference to existing stations. Therefore, the Commission rejected the idea of authorizing translators in the VHF band.[8]

Then, four years later, on July 27, 1960, the FCC adopted rules authorizing the licensing of VHF translators and modifying the rules applying to UHF translators. The new rules required translators to provide complete protection against interference and limited the power of VHF translators to one watt and UHF translators to one hundred watts. In addition, in an attempt to reduce the costs of operating translators, the Commission allowed unattended operation of the translator stations. The new rules also allowed a single licensee to operate more than one television translator even though they might serve the same area. However, VHF translators were not authorized to serve an area that was already receiving satisfactory service from one or more UHF television broadcast stations, unless there was proof of special circumstances.[9]

As the number of translators grew and as the technology improved and the systems became more sophisticated, the demand for increased flexibility and subsequent changes in the translator rules and policies grew also. Changes made during the 1970's by the FCC allowed the following:

--the use of 1000-watt UHF translators: The Commission waived its rules and granted the first two of nine applications for 1000-watt UHF translators to be located on the Empire State Building in New York City in June, 1970.[10]

--origination of commercial matter, including local slide announcements, to solicit financial support: in early 1972, the Commission allowed UHF translators to originate purely commercial matter, including slide announcements, soliciting or acknowledging public financial support of UHF translator stations, including the advertising messages of financial contributors.[11]

--origination of local broadcasting as long as translators retained their primary function as rebroadcast stations.[12]

--waiver of the rules to allow eight translators and twelve microwave relay stations to carry programs of two primary stations (KOLO-TV, Reno and KORK-TV, Las Vegas) throughout the state of Nevada. In so doing, the Commission allowed microwave translator relays to operate in the 7000 and 13000 MHz bands instead of confining them to the 2000 MHz auxiliary television band.[13]

--expansion of the amount of time that a slide announcement could be originated by UHF translators, from twenty to thirty seconds per hour.[14]

--authorization in October, 1973, by the Commission for the Chief of the Broadcast Bureau to waive all necessary rules to grant various applications of remote, small communities in Alaska to build translators which would be fed locally with video tape cassettes supplied by various Alaskan television stations.[15]

--adoption in June, 1976, by the Commission of rules permitting UHF translators to use multiple output amplifiers, as had been permitted for VHF translators. This action enabled a single UHF translator to provide service to more than one community.[16]

--the use of FM microwave facilities for incoming signal delivery.[17]

--retransmission of the signal of nearby STV stations.[18]

Although the development of the tranalator systems has been strictly regulated, growth of this service has been rapid because of the demand for television service in rural areas. In 1960, there were only 230 licensed translators, all located in the UHF band. Today, there are 3,796; 2,513 licensed on VHF and 1,283 on UHF. The vast majority of these translators are located west of the Mississippi River in states with low population densities and few full-power television stations.

In 1978, in a major move, the Commission adopted a Notice of Proposed Rulemaking for a new low power television broadcast service that would upgrade translators from rebroadcast facilities to potential broadcast stations. It became increasingly apparent that the capability of translators could serve purposes far beyond those originally conceived, and the Commission's new posture was a reflection of that fact.[19]

Regulation

On August 24, 1978, the FCC initiated a broad inquiry into the role of low power television broadcasting, including television translators, in the overall national telecommunications system, with a view towards increasing diversity of programming to both rural and urban areas.[20] The purpose of the Notice of Inquiry was to improve television diversity with a coherent, long-range plan for the use of television translators with altered functions and for the use of low-power television stations capable of origination. On September 9, 1980, the FCC concluded the inquiry stage and adopted the Notice of Proposed Rulemaking for the new LPTV service. Under pressure from Congress and LPTV applicants, the FCC adopted the final rules for LPTV services on March 4, 1982. These final rules will have profound influences on the establishment and development of LPTV service in terms of economics, operations and programming. The final rules are based on six "decision criteria,"[21] proposed in the Notice of Inquiry, which include (A) a tiered application process; (B) ownership;

(C) programming; (D) frequency assignment and technical standards; (E) the status of LPTV.

Tiered Application Processing Procedures

Since the Proposed Rulemaking was adopted, the FCC has been confronted with an unprecedented processing backlog of more than 6,000 applications for television translators and LPTV stations. During the proceeding to formulate the final rules for LPTV, the Commission struggled to solve the dilemma posed by the early deluge of applications. The FCC had adopted channel allocation standards that could be processed by rapid computerized interference analysis; however, the full implementation of such a process will not be realized for several months.[22] Consequently, the FCC processing staff faces the enormous task of identifying mutually exclusive applications one by one on a manual basis. The FCC has also discovered that the majority of applications submitted propose to serve the larger television markets. They estimate that approximately 50% of the applications are for the top 50 television markets and 70% for the top 100 markets. On the other hand, only 10-15% of the proposed applications are for areas outside the ranked markets, outside of a market served by one or fewer commercial television station.[23] Under these circumstances, the FCC voiced concern that this imbalanced demographic array of pending applications could frustrate its goal of providing programming in unserved or under-served rural markets. Therefore, the FCC adopted a transitional "tiered" processing system in which the application backlog is subdivided into a number of prioritized groups on the basis of the extent of existing television diversity. In addition, only when the present backlog has been eliminated will the FCC lift the freeze on the filing of television translator and LPTV applications.[24]

Basically, applications are identified in three tiers: "tier one," "tier two" and "tier three." These tiers are classified on the basis of market

location and include "freeze-exempt" applications. During the initial phase, only "tier one" and "freeze exempt" applications will be processed. While "tier one" applicants are waiting for grant or denial through comparative hearings, they will be accorded "protected" status in terms of the contour overlap standards.[25] "Tier two" will follow the same procedures. The freeze will be lifted only after all of the "tier two" applications have been processed. Finally, the FCC will enter the third stage in which the remaining "tier three" applications will be considered. At this stage, "freeze-exempt" applications will be considered "tier three" when received during this processing period. The tiers will also govern what applications can be processed and granted. Only applications in the tier that is being processed can be granted, and, in that case, only if they are not mutually exclusive with other applications in a still-frozen tier.[26] The FCC will announce the completion of each stage of processing.[27]

The three tier classifications will be defined in terms of the Commission's ranking of television market size as stated in the Public Notice titled Television Channel Utilization.[28] The FCC ranks markets from one to 212, and, for purposes of the tiering process, defines the boundary of a market as a 55-mile circle centered around the reference coordinates of the principal market's city or town. The 55-mile radius is roughly equivalent to the predicted Grade B coverage area of a full service UHF television station operating at maximum transmitting power. Consequently, "tier one" will consist of those applications proposing to locate their transmitting antenna at a distance of more than 55 air miles from any FCC ranked television market.[29] This means that only those applications located outside of the FCC's 212 markets will be processed in the first stage. In effect, this strengthens the freeze, leaving only those places without a regular full-service television station eligible for filing.[30] "Tier two" will consist of those markets from 101 to 212. "Tier three" will comprise

the remaining applications and mark the end of the freeze all together. At this stage, the FCC will consider any prospective applicant meeting "tier one" qualifications to be freeze-exempt; but the remaining two freeze-exemptions will be unchanged.[31]

The FCC feels that this process will ensure that urban channel availabilities will not be precluded by tiered processing of rural applications. It is important to note that according to the final rules, "present or future translator licensees, wishing to include LPTV features must notify the FCC"[32] and indicate an understanding of the additional rules with which they must comply.[33] This new rule will enable a translator to upgrade to LPTV operation simply by notifying the FCC. Of course, the notification must include a statement that the licensee understands all of the broadcast copyright and other responsibilities that are required for LPTV program originations. According to LPTV Reporter, there also exists a possibility that the FCC would accept a petition to deny the upgrade, but not accept any competing applications.[34]

Therefore, the presently licensed 3,000 translators could become LPTV services in the near future simply by notifying the FCC. This definitely poses a danger that the major markets will be dominated by present media enterprises. Any television station with a translator could potentially upgrade and create its own LPTV service. The rules on upgrading translators are confusing and leave many questions unanswered.

Ownership Regulation of LPTV

The FCC rules limiting multiple ownership of broadcast properties were designed to encourage a diversity of "voices" in the marketplace of ideas and to foster competition by preventing undue concentration of control in the telecommunications industry. Under the present rules, translators are regarded as mere extensions of the primary station and not as a new voice. Some of the present rules regarding ownership are:

(1) commercial television stations may not own or financially support VHF translators in distant markets not operating on assigned channels.[35]

(2) cable systems may not own translators licensed to the community in which the cable system is franchised.[36]

(3) no VHF translators may be licensed in areas receiving satisfactory service from UHF television stations or UHF translators, except where particular circumstances warrant.[37]

(4) translators operating at maximum power on assigned channels may be authorized only to existing licensees of television stations, unless non-licensee applicants demonstrate the technical capability to operate them.[38]

Several additional ownership rules were imposed on LPTV stations because they were to be treated as "voices in the First Amendment sense."[39]

(1) a duopoly rule, which prohibits commonly-owned stations in the same service with overlapping contours.

(2) a one-to-a-market rule, which prohibits commonly-owned stations in different services with overlapping contours.

(3) the three national networks would not be permitted to own any LPTV stations.

However, the final rules place no limit on the ownership of translators or LPTV stations. The reasons for this FCC decision are two-fold. First, the FCC does not want to impose ownership restrictions that may create entry barriers that fetter the development of the service, whose future is unknown.[40] Second, in today's telecommunications environment, in which there is an increasing number of alternative ways to communicate, the FCC feels that there may be less need for structural regulations designed to facilitate diverse entrants.[41] Therefore, cable systems, television and FM licensees, newspapers, commercial television networks and anyone else may own an "unlimited" number of LPTV services. Similarly, there will be no limit on ownership in the same market.

The final rules eliminate any special provision for non-commercial service. There is no restriction for non-commercial channels nor is there any preference for non-commercial applicants. Originally, based on the idea of spectrum scarcity and the fact that it would take non-commercial applicants longer to

secure funding, the FCC feared that there would be no channels left by the time the non-commercial applicants were ready to apply. However, the Commission now feels that there are still many channels reserved for full-service stations in many markets which fulfill the overall plan for allocation of public stations. Thus, the FCC maintains it is unnecessary to reserve channels for non-commercial LPTV stations.[42]

The final rules also impose a one year "trafficking" rule on new LPTV licenses while a five year license is being granted. LPTV operators will be required to operate their station for one year before assigning its license to a third party for profit or transferring the control of a corporation owning a LPTV license to a third party for profit.[43]

Programming Regulation

The principal behavioral limit the FCC imposes on LPTV with respect to programming is that the programs must comply with the definition of "broadcast" in the Communication Act of 1934 and the FCC program-related regulation. Under these regulations, a potential use of radio frequencies via LPTV must be authorized, with no point-to-point private and common carrier service provided. The LPTV station must originate programming; otherwise, it is considered a translator.[44] In terms of statutory requirements, the final rules continue to impose the Fairness Doctrine, Equal Time rules, Emergency Broadcast System regulations, and obscenity limitations.[45] The obligations to the Fairness Doctrine and Equal Time rule do not apply to translators. No translator is required to begin program origination just to meet these requirements.[46]

There are no program-type guidelines in the final rules. LPTV stations will not be required to ascertain community needs, operate for certain lengths of time, limit their commercial time, maintain program logs or provide local and public affairs programming.[47]

The final rules also permit the LPTV station to provide subscription Television (STV) at the licensee's discretion. There is no need to file STV franchise agreements with the FCC, no technical compatibility standards for LPTV STV equipment, and no minimum hours of programming (24 hours of STV would be acceptable). The final rules do stipulate that STV decoders may not be sold. Decoders can be leased to subscribers. The FCC's reasoning on this point was that decoders could easily become obsolete and subscribers would have to pay additional money each time a new decoder was introduced.[48]

The final rules impose no mandatory carriage requirement of LPTV by cable systems. The FCC feels that decisions about whether or not to carry the LPTV stations on cable should be left to the private parties involved. The FCC notes that the mandatory carriage issue is under consideration in connection with pending copyright legislation; the FCC does not wish to prejudice or preempt forthcoming developments in this area.[49] In the copyright area, although the FCC has not addressed it, at present, television translators are subject to full copyright liability and must get rebroadcast consent from the primary stations.[50] Needless to say, the outcome of these two issues will have great influence on the future of the LPTV service.

Frequency Assignment and Technical Standards

Low power stations are authorized on any VHF or UHF channel from 2-13 and 14-69.[51] Maximum transmission is 10 watts for VHF and 1,000 watts for UHF. VHF transmission is allowed up to 100 watts only when operating within an assigned channel allocation (Table of Assignment).[52] LPTV authorization near Canadian and Mexican borders with maximum power facilities requires coordination with the governments involved.[53]

The engineering systems for fitting new translators and LPTV stations into the existing television environments involves a two-step process. Step one is

that the existing television translators on channels 2-69 are not required to change their facilities to conform with the new criteria. Step two consists of fitting in the LPTV stations without causing interference with the full-service television stations, other LPTV and translators, cable headends and land mobile services. The main emphasis of this process is a concept of "prohibited contour overlap."[54] The protected contour of the LPTV station cannot overlap with the protected contour of an existing full-power service on any channel where interference is possible. Also, a new LPTV station cannot overlap with the protected contour of an existing translator or LPTV service. If two LPTV applications for the same channel have a predicted contour overlap, they will be treated as mutually exclusive and only one license will be granted.[55]

The September 1981 proposals suggested that a smaller protected "field strength" for LPTV stations should be imposed in the congested East and southern California than was being discussed for the "wide open" West. However, the final rules reject this distinction and use the western guidelines everywhere. The final rules state that the use of a 74 dBu protected contour is sufficient for LPTV station's field strength. On a positive note, this LPTV protected contour assures that a LPTV station at maximum transmission power can have protected coverage areas extending approximately 7-8 miles further than the originally suggested smaller field strength. On the negative side, these rules will cut down the total number of LPTV stations because each LPTV station will have a larger coverage area.

In addition to the aforementioned requirements, the technical rules also adopt the desired-to-undesired ratios, offset operation and frequency tolerances, circular polarization and transmitter and other equipment standards. The main purpose of these requirements is to protect the existing services from interference and to maintain high quality signals for viewers.[56]

Secondary Status: Interference Priorities

Under the final rules, LPTV stations are being authorized on a "secondary" basis to all stations in existing primary allocations and must correct whatever interference they cause or cease operation and accept whatever interference they receive from those stations in primary allocation.[57] This means that translators and LPTV stations are secondary to full-service television and, in certain particular situations, to cable television and land mobile service. A LPTV station must relinquish its frequency to a new full-service television station coming on the air and it must correct objectionable interference; otherwise the LPTV station will be forced off the air.

According to the final rules, a LPTV station must protect land mobile radio operation in the band channels 14-20. The LPTV services are prohibited from using channels 16, 17 and 18 in some densely populated areas, and all UHF grants in the top markets must be cleared with land mobile interests in the Private Radio and Common Carrier Bureau.[58] Cable television also has protection for its cable headend from any interference from local LPTV stations. Where the cable uses a modulator to feed the cable channels into one channel of the home receiver, that channel will be protected, also. Overall, the LPTV stations are responsible for eliminating and correcting all possible interference caused by them.

Comparative Hearings and Lotteries

As was mentioned earlier, when two applications are mutually exclusive in tiered processing, the case must be resolved in a paper hearing. However, the FCC has adopted an abbreviated comparative process for LPTV because of its secondary status and because prolonged and elaborate comparative procedures may impose serious financial barriers for potential entrants into the industry. The abbreviated comparative procedure system contains three departures from the

customary method of comparing mutually exclusive applications: (1) a paper hearing will be held on designated issues instead of a hearing with oral testimony; (2) there will be only two comparative criteria, 50 percent minority ownership and lack of other media ownership; (3) and a lottery will be implemented to decide among the applicants who are deemed equal in the comparative hearing.

According to the final rules, all LPTV comparative cases will be decided under the paper hearing procedure; oral testimony will be ordered only where it is shown that the paper proceeding alone will prejudice a party. All paper hearings are reviewed by staff attorneys in the Mass Media Bureau; each party will file a direct case and a rebuttal (and possibly a re-rebuttal, or "surrebuttal"),[59] and a text of a proposed decision. The attorney will decide who will have the license, write a brief statement of any qualifications or exceptions and send it to the seven commissioners for routine approval. Therefore, the procedures bypass administrative law judges and the FCC Review Board. It is interesting to note here that the FCC encourages mutually exclusive applicants to solve that problem through private settlement; of course, any settlement agreements must be submitted for FCC approval.

Even though the final rules adopted an abbreviated comparative hearing procedure to avoid the time-consuming traditional hearing, the process will still be slow. To speed up this process, Congress passed the Omnibus Budget Reconciliation Act in 1981 which gives the FCC the authority to implement a lottery system.

There has been a long history of the FCC's asking Congress for authority to use a system of random selection--a lottery--in choosing among equally qualified applicants for a broadcast license. The Commission has taken the position that use of a lottery to select initial licenses can offer distinct

advantages over the traditional comparative hearing process: a lottery system can speed service to the public, reduce processing expenses to both applicants and the FCC, and provide a fair means of allocating spectrum resources.[60]

According to Commission estimates, the average delay in the awarding of a full-power license caused by a mutually exclusive hearing is three years. Enormous economic losses accompany this delay: unrealized profits on the use of the idle spectrum; tangible costs to the applicants and the Commission for legal and engineering consultation; and loss of consumer satisfaction that could have been derived from the new service.

In July, 1981, Congress passed as part of the Omnibus Budget Reconciliation Act of 1981 authorization for the FCC to implement a lottery system. The 1981 Act amended the Communications Act to add section 309(i) which stipulated that if there is more than one applicant for an initial license, then the Commission, after determining the qualifications of each applicant, shall have authority to grant the license through the use of a lottery system.

The new section of the Communications Act also contains the provision that the Commission should establish rules and procedures to ensure that in a system of random selection, groups and organizations underrepresented in the ownership of telecommunications facilities be granted significant preferences.

In its Notice of Proposed Rulemaking, which sought comments on a proposed method of implementing a lottery, the Commission, using the House Conference Report for the 1981 bill for guidance, suggested that "groups and organizations underrepresented in ownership" include minorities, women, labor unions and community organizations. "Minorities" was defined in the Notice to include blacks, Hispanics, American Indians, Alaska Natives and Asian and Pacific Islanders. In order to receive a preference, telecommunications companies must be at least fifty percent owned by members of the underrepresented groups.[61]

Since the statute provided no guidance as to how the FCC should accomplish

the task of awarding preferences based on underrepresentation, the Notice asked for comments regarding implementation of a weighted preference scheme. Finally, while the Commission determined that women and minorities can be "self-certified" as underrepresented, it reasoned that labor unions and community groups should have to make an affirmative showing of underrepresentation in order to receive a preference.

On February 8, 1982, the FCC adopted a Report and Order which said that although the Commission supported the concept of a lottery, the authorizing legislation made the particular scheme proposed unworkable.[62] At issue in this proceeding, which terminated the FCC's attempt to implement a system of random selection mandated by the Omnibus Budget Reconciliation Act, were the conditions that Congress had imposed upon the lottery. The most important of these was the requirement that the Commission determine the qualifications of each applicant before the imposition of the lottery. Determining qualifications prior to use of a lottery, the FCC staff said, would not save the Commission time or expense, since the lottery could not be implemented until after complete review, comparable to a comparative hearing, had been completed.

The second requirement that the FCC found unworkable was the mandate to establish rules and procedures to insure that groups which are underrepresented in the ownership of the telecommunications industries would be granted a significant preference. The staff felt that the legislation had not been clear enough in explaining what groups should receive this preference. Presumably any group that doesn't own broadcast facilities could qualify as underrepresented.

FCC implementation of a lottery system was reconsidered by Congress during the summer of 1982 and a new bill was developed, approved, and signed into law by the President on September 13, 1982.

The new law, which replaces that part of the 1981 Omnibus Budget Reconciliation Act dealing with lotteries, addresses the twin concerns of the FCC, and allows the agency first to consider an applicant's qualifications after the imposition of the lottery; and second to award preferences only to recognized minorities--Blacks, Hispanics, American Indians,[63] Alaska natives, and Asian and Pacific Islanders. Thus the way has been cleared for the Mass Media Bureau to use a system of random selection in the awarding of LPTV licenses.

Potential Problems: The Final Rules

In reviewing the FCC final rules regarding LPTV, it is clear that the Commission's "unregulatory" philosophy was present in the final rulemaking process. As mentioned, there are few structural regulations. Anyone can own as many LPTV stations as he likes. There are also no limitations on how many stations can be owned in the same market by one person. Meanwhile, there are so many mutually exclusive applications that are waiting for comparative hearings in order to get construction permits for initial operation that it will take the FCC a long time to get through them. The relaxed paper hearing will still be time-consuming because no lottery system has been implemented by the FCC.

The one-year trafficking rule invites big corporations and larger broadcast stations to quickly buy out local LPTV owners. Thus, the lack of structural regulations poses a danger that future LPTV markets will be dominated by media giants.

Present regulations protect the existing translators, which can upgrade to a LPTV service just by notifying the FCC. So, it is conceivable that the present station owners could upgrade their translators and automatically have many stations in the larger markets. For those who do not have good track

records, are inexperienced in programming and would be frustrated by the complicated technical standards, selling the station after only a year of operation would provide a profitable way out. Even though the comparative hearings will favor diversity of ownership, the relaxed trafficking rule gives broadcast corporations a way to acquire LPTV stations later on.

Present cable operators, especially those who have cable networks, will be able to carry their own LPTV programming and compete with other LPTV stations. This could force other local stations into financial hardships. Because of the economic factors, rural areas could possibly remain unserved. In 1961, the VHF translator rules adopted by the FCC permitted broadcast station licensees to acquire VHF translators. Later, it became apparent that applications were being filed by broadcast stations for purposes other than as a "fill in" for shadowed areas within their predicted service contour. Some of these applications were clearly motivated by a desire to extend the coverage of the regular television broadcasting. The VHF translators served as the weapon in competition for more advertising revenue.[64] Likewise, the LPTV station owned by a large media corporation will provide additional advertising revenue plus a competitive edge over other media owners in the same area. LPTV becomes a competitive weapon rather than an instrument to be utilized by people living in under-served areas.

The final rules do not restrict ownership of LPTV stations by the major networks; the lack of such ownership rules obviously benefit the existing networks and media services, rather than the public interest.

Behavioral regulations also lose sight of the initial purpose of LPTV services. Local programming could be eliminated. Large corporations (like Sears and others) could buy an LPTV service and utilize it for 24 hour commercial advertising. This could wipe out all local programming for that service area. There are no rules restricting commercial time or requiring local programming.

Areas that were previously lacking local service may never realize local programming, even with the new LPTV service.

Conclusion

The FCC's initial intention to provide local service for areas that are presently unserved or under-served was logically sound; however, the Commission's philosophy and final rules do not support the same end. The lack of structural and behavioral regulations threaten the very purpose of LPTV. Local owner-operators are not protected in their venture to provide diverse local programs. The audience is not guaranteed any amount of local or public affairs programming. The larger media corporations are allowed ownership of as many LPTV stations in as many markets as they please. The one year trafficking rules guarantee corporations that there will be stations available just about anywhere in the country.

Besides the regulations, the procedures outlined for granting LPTV licenses will be slow and detrimental to the growth of LPTV.

FOOTNOTES

[1]"Regulatory Trends in the 1980's: More Owners and More Stations." SRA Issue Reports (New York: New York, 1980): 34.

[2]FCC Notice of Proposed Rulemaking, "An Inquiry into the Future Role of LPTV Broadcasting and TV Translators in the National Telecommunications System," BC Docket No. 78-253. 82 FCC 2d 47 (September 9, 1980). (Hereafter cited as Proposed Rulemaking.)

[3]FCC Report and Order, "Amendment of Part 1 of the Commission's Rules to Allow the Selection from Among Mutually Exclusive Competition Applications Using Random Selection or Lotteries Instead of Comparative Hearings," General Docket No. 81-768. FCC 82-68 (February 8, 1982).

[4]P.L. 97-259.

[5]FCC Notice of Inquiry, "An Inquiry into the Future Role of LPTV Broadcasting and TV Translators in the National Telecommunications System," BC Docket No. 78-253. 68 FCC 2d 1525 (August 8, 1978). (Hereafter cited as Notice of Inquiry.)

[6]Notice of Inquiry, 68 FCC 2d 1541 (August 8, 1978).

[7]Ibid., 68 FCC 2d 1542.

[8]Ibid., 68 FCC 2d 1543.

[9]Ibid., 68 FCC 2d 1544-1545.

[10]Ibid., 68 FCC 2d 1547. 23 RR 2d 1504 (1971).

[11]33 FCC 2d 418 (1972).

[12]Section 318 Communication Act, as amended in 1976.

[13]38 FCC 2d 555 (1972).

[14]54 FCC 2d 421 (1975).

[15]42 FCC 2d 667 (1973).

[16]FCC Report and Order, Docket 20580. FCC 76-593 (1976).

[17]FCC Report and Order, Docket No. 20539. 67 FCC 2d 209 (1977).

[18]68 FCC 2d 1549 (1978).

[19]Ibid.

[20]Ibid. 68 FCC 2d 1525.

[21]Six Criteria are: 1. public need for program diversity; 2. spectrum requirements; 3. interference to communications services; 4. media competition and economic impact; 5. low power/translator economic viability and ownership; and 6. impact on Commission resources and service implementation delays.

[22]FCC Report and Order, "An Inquiry into the Future Role of LPTV Broadcasting and TV Translators in the National Telecommunications System," BC Docket No. 78-253. FCC 82-107, (March 4, 1982). (Hereafter cited as Final Rules.) Appendix E, Paragraph 1.

[23]Ibid.

[24]Ibid., Paragraph 2.

[25]FCC Final Rules, p. 12, Paragraph 20.

[26]"Sneak Preview," LPTV Reporter, April 1982, p. 7.

[27]FCC Final Rules 82-107, Appendix E, Paragraph 2.

[28]Ibid., Paragraph 3.

[29]Ibid.

[30]Ibid., Paragraph 5.

[31]Ibid.

[32]FCC Final Rules, p. 48, Paragraph 82.

[33]"Translator Upgrades," LPTV Reporter, April 1982, p. 1.

[34]Ibid.

[35]Final Rules, p. 49, Paragraph 84. FCC regulation Section 74.732 (e)(1) and (2).

[36]Ibid., Section 76.501 (a)(3).

[37]Ibid., Section 74.732 (d).

[38]Ibid., Section 74.732 (i).

[39]Final Rules, p. 49, Paragraph 85.

[40]Ibid., p. 50.

[41]Final Rules, p. 50, Paragraph 85.

[42]Final Rules, pp. 16-17, Paragraph 28

[43]Final Rules, pp. 55-56, Paragraph 98. LPTV Reporter, Jan., 1982.

[44]Final Rules, p. 57, Paragraph 104.

[45]Ibid., Paragraph 105.

[46]"Sneak Preview," LPTV Reporter, April 1982, p. 5.

[47]Final Rules, p. 58, Paragraph 106.

[48]Final Rules, p. 59, Paragraph 109.

[49]Final Rules, p. 61, Paragraph 112.

[50]Ibid.

[51]Final Rules, pp. 17-18, Paragraphs 29-30.

[52]Final Rules, pp. 19-20, Paragraphs 32-34.

[53]Final Rules, p. 26, Paragraph 42.

[54]Final Rules, p. 23, Paragraph 36.

[55]Ibid.

[56]Final Rules, pp. 25-32, Paragraphs 39-49.

[57]Final Rules, p. 30, Paragraph 46.

[58]Ibid.

[59]Final Rules, pp. 44-45, Paragraphs 72-77.

[60]Notice of Inquiry and Proposed Rulemaking in CC Docket No. 80-116 (Multipoint Distribution Service), 45 Fed. Reg. 29335 (May 2, 1980).

[61]Notice of Proposed Rulemaking in Gen. Docket No. 81-768 (November 5, 1981).

[62]Ibid.

[63]P.L. 97-259.

[64]Notice of Inquiry, 68 FCC 2d 1544 (August 8, 1978).